

Here are some interesting items of info. My thanks to all who shared information on these!!!

Have a great weekend!!!

Ken

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***** [hipaalive] GENERAL: Thompson says I have the authority..

>>> AFEHCT@aol.com 03/23/01 01:07AM >>>

*** This is HIPAAlive! From Phoenix Health Systems ***

Subj: Thompson says I have the authority..

Secretary Thompson appearing on Fox News Channel program "Hannity & Colmes" at 9 PM March 22nd as quoted on the www.newsmax.com web site

"But I can tell you that I do have the authority to rewrite it, to suspend it, to postpone it, or to let it go into effect the way it is. And right now I can't comment on what I'm going to do because what we have in the federal law is a comment period so people like yourself and anybody else who's watching the program can write in and tell me what should be done."

The Newsmax.com website says further... "The Clinton medical privacy rule is due to take effect on April 14. Sign NewsMax.com's Free Petition to Secretary Thompson to help stop Clinton's executive order"

A transcript or replay of the Thompson appearance on the Hannity & Colmes program was not available as of this e-mail but can be accessed at www.foxnews.com/channel

Tom Gilligan

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***** California Healthline - BCBS Requests Delay *****

BCBS Requests Delay on HIPAA 'Administrative Simplification' Provisions
The Blue Cross/Blue Shield Association is lobbying the Bush administration and Congress for an additional two years to come into compliance with the "administrative simplification" requirements of the Health Insurance Portability and Accountability Act, CongressDaily/A.M. reports.

<http://www.californiahealthline.org/members/basecontent.asp?contentid=42053&collectionid=3&contentarea=9507>

***** Privacy Hearing in Washington DC

>>> "Sherman, Shneur (DHS-ITSD)" <SSherman@dhs.ca.gov> 03/23/01
07:03AM >>>
FYI.

-----Original Message-----

From: Privacy, Security and Confidentiality of Medical Records 2001

[<mailto:nealn@hlthtech.com>]

Sent: Fri, March 23, 2001 5:04 AM

To: List Member

Subject: Privacy Hearing

Privacy, Security and Confidentiality of Medical Records 2001 -

<http://www.hlthtech.com>

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The House Energy and Commerce, Health Subcommittee held a hearing here in Washington yesterday on the privacy rules. Below is today's Washington Post account of the hearing. Having worked many years in Congress, it is my opinion that despite the introduction of a bill to stop the rules, Secretary Thompson's re-opening of the rules for comment, and yesterday's hearing -- that the strong presumption is still in favor moving forward -- albeit at a slower pace and with likely changes. We'll keep you posted.

Health-Care Firms Seek to Weaken Privacy Rules

By Robert O'Harrow Jr.
Washington Post Staff Writer
Friday, March 23, 2001; Page E1

The Bush administration, already under pressure from the health-care industry, heard new calls yesterday to weaken Clinton privacy regulations aimed at sharply restricting how hospitals, doctors and other providers use personal information in patients' medical files.

The federal rules, released during President Bill Clinton's last month in office, require health-care providers to obtain consent before using patients' personal information and to limit the data that employers, drugmakers and marketers can receive.

Doctors, patients and privacy advocates generally praise the rules as overdue. But industry leaders complained again at a House hearing yesterday that they would hurt patient care and raise costs.

The hearing came one month after Health and Human Services Secretary Tommy G. Thompson said he was delaying the effective date of the rules until April because the rules were not delivered to Congress on time. He reopened the comment period to give interested parties another chance to voice objections. The rules could be delayed further, he told Congress, "if we make some major changes."

Seizing on the delay, Republican members of Congress and industry representatives urged just that yesterday.

"Why in God's name put a rule in place we know is wrong?" Rep. Charles Whitlow Norwood Jr. (R-Ga.), a member of the House Energy and Commerce subcommittee on health, said at the hearing. "Let's just step back and give this new secretary, give us, some time."

"This is a prescription for chaos," said Carlos Ortiz, director of government affairs for CVS Corp., calling the current version of the rules unworkable.

Critics note the new administration has already made industry-friendly decisions to sign a bankruptcy bill and a resolution killing an ergonomics rule, and to reverse Clinton administration decisions on carbon dioxide emissions and arsenic levels in drinking water.

They say the Bush team's second thoughts about medical privacy show it is bending to the wishes of industries that gave millions of dollars to Republican committees and candidates in recent years.

The industry - including hospitals, health insurers, medical equipment suppliers and drugmakers - gave more than \$7.4 million to Bush and the Republicans in the past two years, according to the Center for Responsive Politics.

"Some are saying that it needs some fine-tuning, or that some sections need to be fixed. Make no mistake - that is not what the industry giants with money to burn are really trying to do," Sen. Patrick J. Leahy (D-Vt.) said this week. He is one of 60 Democrats who sent Bush and Thompson a letter Wednesday urging enactment of the rules as written.

"They are trying to kill the medical privacy rule, and they are trying to get the new administration to pull the trigger," Leahy said.

Robert Gellman, a lawyer and privacy consultant in the District, said the problem is that the health-care industry "has had the luxury of totally ignoring privacy for decades."

"They just want this to go away," he said.

The regulations are required by legislation Congress passed in 1996 to allow workers to change jobs without losing health insurance coverage. Under the law, Congress had to pass medical privacy legislation within three years or the responsibility fell to the Department of Health and Human Services. The deadline passed partly because senior Republicans could not agree on what to do.

"I'm very worried a business climate is prevailing here," Mary Foley, president of the American Nurses Association, said after she testified yesterday in favor of moving ahead with the regulations. "I'm worried there is a real effort to find reason to delay or derail the regulations."

Industry representatives met with committee officials to air their concerns before the hearing was scheduled, according to committee spokesman Ken Johnson. He said that played no role in the decision. "No one's leaning on us to hold a hearing," he said. "We're doing it because it's our responsibility."

Members of the Healthcare Leadership Council - a trade group that includes hospitals, drugmakers and pharmacy chains - said they support patient privacy. But they feel the Clinton regulations go too far and would be too costly to implement. The government estimated that it would cost industry \$18 billion over 10 years to adopt the new rules, while one industry study put the cost at \$40 billion over five years.

In new comments on the regulation, the council said it wants to change the requirement that hospitals, pharmacies and doctors obtain consent before using patient information. Among other things, the group says, the requirement would "create chaos" at drugstores by forcing them to obtain permission from millions of customers.

The group said it was surprised by the consent provision, which wasn't in the proposed rule, and recommends that the regulation allow patients' identifiable information to be "used and disclosed for treatment, payment and health-care operations without consent or authorization."

It also wants the administration to remove a requirement that hospitals, pharmacies and other companies create contracts outlining limits on the use of patient records by their business associates.

Consumer advocates say such complaints are intended to distract attention from the industry's real concern: Privacy regulations will cut into profits. They agree that the current document has flaws - it allows marketers associated with health-care providers access to some patient records without consent, for instance. But they argue that it is an advance.

"There are very few [special] interests in this town who want real privacy protections, because it's not in their interest," said Gary Claxton, a former senior Health and Human Services official who oversaw development of the regulations. "It's threatening."

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***** [hipaalive] GENERAL: Secretary Thompson on TV 9 PM last night

>>> AFEHCT@aol.com 03/22/01 02:18PM >>>

*** This is HIPAAlive! From Phoenix Health Systems ***

HHS Secretary Thompson to appear on Fox News Channel "Hannity & Colmes" tonight at 9 PM ET a replay of the program will be available at FOXNEWS.com/channel/video.sml.

The HHS privacy final rule is highly likely to be addressed.

Last night on the same program, one guest said the regulations "would create a unique health identification number for every individual in this country, track them from birth to death. If you've ever

been to a psychiatrist, someone in your family's ever had an abortion, you've ever had a drinking problem, any ... sexually transmitted diseases, the government would have all of that information and could look at it without your consent."

Co-host Sean Hannity said that "doctor[s] will have to [release], as mandated by law, ... [the] private personal medical records of every U.S. citizen. There will be no privacy anymore! It will no longer exist! I would think liberals would be upset about that"

Tom Gilligan
AFEHCT
202 244 6450
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*17 MEDICAL PRIVACY: FOX NEWS CHANNEL DEBATES RULES

Guests on Fox News Channel's "Hannity & Colmes" yesterday debated the Clinton administration's medical privacy regulations, which HHS Secretary Tommy Thompson is currently reviewing. Guests Christopher Ruddy, editor of the online newsletter Newsmax.com, and Robert Weiss, a Democratic attorney, discussed the extent to which the rules will give government agencies access to private medical files, and what the agencies can do with that information. Ruddy said the regulations "would create a unique health identification number for every individual in this country, track them from birth to death. If you've ever been to a psychiatrist, someone in your family's ever had an abortion, you've ever had a drinking problem, any ... sexually transmitted diseases, the government would have all of that information and could look at it without your consent." Weiss said, "these regulations are opposed by the insurance industry, and [the delay] is a big payback for the insurance industry." He added that the regulations already "have had 50,000 public comments, have been through a variety of different lawyers and different commentators," and are "very well-thought out." Co- host Sean Hannity said that "doctor[s] will have to [release], as mandated by law, ... [the] private personal medical records of every U.S. citizen. There will be no privacy anymore! It will no longer exist! I would think liberals would be upset about that" ("Hannity & Colmes," Fox News, 3/21). HHS Secretary Thompson will be a guest on Hannity & Colmes this evening. Check local listings for show times.

***** [hipaalive] HIPAA Sample Document Site - \$50 (?) fee for it

*** This is HIPAAlive! From Phoenix Health Systems ***

We will be happy to post this presentation to the Members Only Doc Site.

As many of you probably remember, this site was established to allow the type of document sharing you wish to do. We currently are over 3100 strong on this mailing list and not everyone will want a large file forced into

their e-mail box. However, no one wants the list clogged with "Send me a copy too!" e-mails. Hence the Doc Site.

Read more about the Doc Site at:

<http://www.hipaadvisory.com/MembersOnlySignup/index.cfm>

(this link is included at the bottom of every HIPAAlive mail.

Thanks, Diane

--

Diane Boettcher

Webmaster/Editor: HIPAAAdvisory, HIPAAAlert, HIPAAlive, HIPAAnotes

Phoenix Health Systems

dboettcher@phoenixhealth.com / 301-869-7300

***** [hipaalive] sample policies *****

Deborah et al, here is a site called HIPAA Readiness Collaborative Pilot Policies: <http://www.hhic.org/hipaa/pilots.html> It has some good sample policies

that might get you started. It does not charge a fee.

Austin M. O'Flynn

Corporate Counsel

CHW

***** [hipaalive] Re: GENERAL-vendor questions *****

>>> MSpurg5119@aol.com 03/22/01 12:06PM >>>

*** This is HIPAAlive! From Phoenix Health Systems ***

The State of Ohio has put a list of vendor questions, plus risk assessment and document check list, on its website. Here is information about how to get to the appropriate location:

1. Go to the ODMH Website: <http://www.mh.state.oh.us>.

2. Click on: DEPARTMENT

3. Scroll down to "Reference Materials & Documents"

Click on HIPAA Information

4. Scroll down to Presentations-Materials-Documents

Several menu items are listed, just click on any of the following:

HIPAA Risk Assessment

Document Check List

Questions to ask Software Vendors

I don't think there is any information provided about how these three documents were developed or by whom.

Margaret Spurgeon
Ohio Council of Behavioral Healthcare Providers
mspurg5119@aol.com

**** [hipaalive] MEDICAL SAVINGS ACCOUNTS viewed as a health plan and covered entity *****

>>> tom.hanks@beaconpartners.com 03/23/01 05:04AM >>>

*** This is HIPAAlive! From Phoenix Health Systems ***

The case of an MSA is very interesting.

I think you could make an argument that an MSA is not a covered entity and only manages the employees' savings under MSA guidelines.

However, this is not always the case. In the way an MSA operates, there are times that the MSA reimburses an employee for more than they have contributed. E.g. if an employee elects to save \$2,400 annually, has a large claim for \$2,600 in January and leaves the employer the end of February, they have only contributed \$400, but have received \$2,400, which is not recoverable by the employer. On the other hand, if the employee only has claims for \$2,000 for that year, they forfeit the unclaimed balance of \$400. Therefore, there is an argument for those activities to be viewed as pooled risk. Also, since an MSA plan adjudicates claims and reimburses employees for health care, they are a third-party providing reimbursement for health care services.

Bottom line is I think there is a stronger argument that an MSA fits the definition of a health plan and are a covered entity. In which case they would be subject to all the rules promulgated under HIPAA.

- 1) Whether the claims are from employees or providers, or are electronic or paper, has no bearing on whether a health plan is a covered entity. They are covered regardless of whether they conduct electronic transactions.
- 2) Technically, they must have the capability of conducting electronically using HIPAA standard transactions any activity they are currently conducting that could be conducted electronically using those HIPAA standard transactions (e.g. most probably claims and claims status). Although I doubt employees will be beating their door down demanding they accept a HIPAA standard 837 and asking them to return an 835.

Tom Hanks
Practice Director, Enterprise Security & HIPAA Compliance
Beacon Partners, Inc.

***** [hipaalive] TCS: Referral/client billing - viewed as a provider

>>> tom.hanks@beaconpartners.com 03/23/01 05:15AM >>>

*** This is HIPAAlive! From Phoenix Health Systems ***

QUESTION POSED:

We are currently performing referral/client billing (i.e., lab specimen billing) where multiple charges for multiple patients are sent on one bill to a client. Does this practice fall under HIPAA and if so will we need to start submitting an 837 institutional?

Michele T. Kruse, RHIA
Senior Management Analyst
Saint Francis Health System

ANSWER GIVEN:

You appear to be a provider entity.

As such, there is no requirement for you to send the described transactions electronically. Whether your client must be capable of receiving these transactions electronically would depend on whether your client would be considered a health plan, and if the transaction could be conducted using a HIPAA standard transaction.

Thanks,

Tom Hanks
Practice Director, Enterprise Security & HIPAA Compliance
Beacon Partners, Inc.

>>> HoleLB@dshs.wa.gov 03/23/01 07:33AM >>>

*** This is HIPAAlive! From Phoenix Health Systems ***

If you, as a provider, electronically submit a covered transaction, including batched claims to a payer, then it must be in a HIPAA compliant format.

Also, if your "other clients who are providers" are independent companies that you are performing billing services for, then you are probably acting as a clearinghouse with respect to them, and those transactions would be required to be in a HIPAA compliant format when transmitted to a payer.
Thanks.

Leah Hole-Curry, HIPAA Legal Officer
WA-DSHS

***** [hipaalive] GENERAL: entity preparing data for JCAHO is a business associate *****

>>> tom.hanks@beaconpartners.com 03/23/01 05:09AM >>>

*** This is HIPAAlive! From Phoenix Health Systems ***

QUESTION POSED:

I am a very small vendor that receives performance data from hospitals, sends them back a graphic presentation of their data versus the database and also send selected data to JCAHO on a quarterly basis.

The information I receive from the hospitals is by individual patients identified by their medical record number. The data I send back to the hospital and on to JCAHO does not contain any patient specific information.

My question is: where does our role start & stop with HIPAA ? Are we considered a clearinghouse ?

If so, how do I find out what of the new HIPAA regulations pertain to me?

Thanks for your help from this wonderful informative group !

Susan Mellott
Mellott & Associates

ANSWER GIVEN:

Susan,

You appear to be a business associate of the hospital and would be controlled by the Business Associate Contract under the Privacy rule.

Thanks,

Tom Hanks
Practice Director, Enterprise Security & HIPAA Compliance
Beacon Partners, Inc.

***** [hipaalive] RE: Security - E-mail attachments via Internet *****

>>> tom.hanks@beaconpartners.com 03/23/01 05:20AM >>>

*** This is HIPAAlive! From Phoenix Health Systems ***

There is no prohibition on sending/receiving email. There is a requirement that PHI transmitted over the Internet be encrypted. From your description, I cannot tell for sure, but I doubt that the information is encrypted. Password protection is not an indicator that information is encrypted.

Tom Hanks
Practice Director, Enterprise Security & HIPAA Compliance
Beacon Partners, Inc.

***** [hipaalive] rough Assessment cost ranges

*** This is HIPAAlive! From Phoenix Health Systems ***

Since my company does this kind of work I can give you the following info in regards to assessments (cost varies among companies, but so you have an idea): A highlevel assessment can cost you between \$100k -\$250k. A back to end assessment form \$150k -\$1M. The gap anlysis cost will depend on the results of the assessment.

Regards,

Gonzalo M. Salinas
Consultant
BIS - EG

***** Bush says current health care bills inadequate *****

March 21, 2001
Web posted at: 12:30 PM EST (1730 GMT)

ORLANDO, Florida (CNN) -- Bluntly declaring current proposals inadequate, President Bush offered his outline for a bill to protect patients' rights under insurance plans Wednesday.

"I want to sign a patients' bill of rights this year," Bush said in an address to the American College of Cardiology. "But I will not sign a bad one, and I cannot sign any one that is now before the Congress."

Bush said any "patients' bill of rights" must have lower caps on damage awards than current bills propose. And it should include a "strong, binding, independent" review process to keep disputes among patients, doctors and insurers from turning into lawsuits.

A bipartisan patients' bill of rights passed both houses of Congress last year, but a conference committee was unable to reconcile differences between the two measures. The most contentious issue in the debate has been a patient's ability to sue in federal court, and a new version of that bill tries to settle that by capping any award from a federal lawsuit at \$5 million.

That's not good enough, Bush said Wednesday.

"Any federal bill must have reasonable caps on damage awards, and the caps on proposed legislation in Congress are too high and will drive up the cost of medical care in America," he said. But Bush did not specify what amount he would consider acceptable.

Supporters of the measure Bush criticized say his conditions aren't new -- they have been supported by the managed care industry for years.

"The people who have been fighting for a real patients' bill of rights over the last five years support our bill," said Sen. John Edwards, D-North Carolina. "To our knowledge, the only group that supports the principles the president is outlining are the HMOs."

Bush said any bill must cover all privately insured Americans, yet preserve states' efforts to reform health maintenance organizations. Patients must have a right to emergency treatment, to see a specialist when needed and a right to participate in clinical trials when conventional treatments fail.

If care is denied, Bush said, a patient should have a "fair and immediate review."

While patients should be able to sue, he said, "With a strong, independent review process, most disagreements should not wind up in court."

As he did during last year's campaign, Bush touted as a model a bill that passed in Texas while he was governor. That measure allows patients to choose their own doctors, appeal denials of care and sue their HMOs under limited circumstances.

Bush frequently invoked his heart during the campaign, and his vice president, Dick Cheney, has been hospitalized twice for heart trouble since November. In Wednesday's speech to the cardiologists' association, he joked that he had invited Cheney along -- but "He said he's seen enough cardiologists lately."